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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Proceeding to
Consider Rules to Implement the Broadband
Equity, Access, and Deployment Program.

R. 23-02-016
(Filed February 23, 2023)

OPENING COMMENTS OF

**CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C) AND
WINTERHAVEN TELEPHONE COMPANY
("SMALL LECS")**

ON THE ORDER INSTITUTING RULEMAKING

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I. INTRODUCTION.

Pursuant to Rule 6.2 of the Rules of Practice of Procedure of the California Public Utilities Commission (“Commission”) and the schedule set forth in the Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program (“OIR”), Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the “Small LECs”) submit these opening comments on the OIR. The OIR seeks opening comments within 46 days of its issuance, and the OIR was issued on March 1, 2023, so these comments are timely filed.

The Small LECs serve some of the most rural and sparsely-populated areas in California. As a result, the Small LECs should be obvious partners for using funds distributed pursuant to the Broadband Equity, Access, and Deployment (“BEAD”) Program to continue the strong work they are doing in building out scalable broadband infrastructure, capable of delivering the broadband speeds demanded by customers and regulators, in unserved and underserved areas. While the Small LECs are already working to upgrade their networks to accommodate those faster broadband speeds, access to BEAD Program funds will assist that process.

As the Commission moves to adopt rules to expeditiously deploy funds under the BEAD Program, it should recognize that an efficient program will minimize additional rules beyond those already mandated at the federal level. Doing so will expedite the adoption of rules and will also avoid conflicts, confusion and inefficiency that are likely to result when either layering on additional compliance obligations or even creating conflicting compliance obligations between state and federal rules. The more detailed rules the Commission adopts, the more likely the Commission will place the subgrantee of BEAD funds in a precarious position of trying to adhere to state rules that directly conflict with federal regulations. These considerations should inform any actions the Commission takes in this proceeding.

II. RESPONSES TO ISSUES RAISED IN THE OIR.

In Section 2, the OIR identifies a series of issues and questions and asks parties to respond to them in opening and reply comments on the OIR. In these comments, the Small LECS respond to some, but not all, of the issues. The Small LECs may weigh in on additional issues depending upon the substance of opening comments submitted by other parties.

1. Extremely High-Cost Threshold: How should the Commission define the threshold for locations that constitute “extremely high cost” locations?

As described in the BEAD Program’s Notice of Funding Opportunity issued by the National Telecommunications and Information Administration (“NTIA”) on May 13, 2022 (“BEAD NOFO”), the Commission may identify a subsidy cost per location above which the Commission may decline to select a proposal. The Small LECs urge the Commission to be careful about adopting a cap that creates poor short term solutions to broadband infrastructure builds resulting from the once in a lifetime funding opportunities emanating from the Infrastructure Investment and Jobs Act of 2021. An alternative to an end-to-end fiber solution that does not last 20 years is not a prudent capital investment with public funds. While the Small LECs do not offer a figure upon which to base the “extremely high cost” determination, the Commission should not set the threshold lower than any locational cost resulting from previous funding determinations in other broadband funding programs. Also, the Small LECs submit that the funding limits in the California Advanced Services Fund have no applicability to the BEAD Program, which is intended to deploy facilities in the most costly of the high-cost areas to serve.

2. Geographic Level: What is the best, or most appropriate, geographic level for subgrantee proposals?

Subgrantees should be allowed to define their own proposed funded service areas. From the Small LEC experience, well-understood geographic delimiters such as city boundaries, county boundaries or even census-based boundaries do not tie well to real-world service offering considerations. These or any other boundary definitions will inevitably fall short of meeting the unserved and underserved criteria that is the guiding principle of the funding opportunity. Allowing applicants to specify their own service areas has worked well for the

federal Rural Utilities Service's ("RUS's") ReConnect program and other grant programs and should be permitted by the Commission under the BEAD Program.

3. Overlapping Project Areas: What mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?

Consistent with the preferences expressed in the BEAD NOFO, to the extent there are overlapping project areas, the Commission should give preference to the project that proposes to deploy the most fiber at the most effective grant request. For example, a fiber to the premises proposal should receive preference over a project that is only deploying fiber to a node, and both such fiber-based proposals should receive preference over a proposal that does not include any fiber.

4. Selection Among Priority Broadband Projects: In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered? How should they each be measured, and should they be weighted in prioritization?

The Commission should minimize the number of additional prioritization factors applied to the BEAD Project funding. To the extent that it does adopt its own prioritization factors, the Commission must ensure that such criteria do not conflict with federal rules and regulations. As a guideline, the Commission should generally rely on the point structure adopted for the RUS's ReConnect program, which will help avoid unanticipated conflicts with federal directives.

The Small LECs also urge the Commission to reconsider the prioritization factor attributed to non-profit entities, including governmental agencies, applied in other state funding frameworks (and also found in the ReConnect program). Non-profit entities and governmental agencies are no better situated to deploy facilities rapidly than entities such as the Small LECs. If anything, the Small LECs are better suited to execute the objectives underlying the BEAD Program as they have experience building and operating high-speed networks. Furthermore, the Small LECs generally have strong working relationships with the local governments and tribal governments in their service areas.

5. Selection Among Other Last-Mile Broadband Deployment Projects: In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, which Additional Prioritization Factors should be considered? How should they each be measured, and should they be weighted in prioritization?

The Small LECs urge the Commission to minimize the addition of prioritization factors to the BEAD Project funding process. The more factors that are added, the less discretion and subjectivity the Commission retains to make sound decisions on what promises to be an array of unique proposed projects.

6. Challenge Process: What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called “unserved”?

The Commission should model its challenge process on that used for the RUS’s ReConnect program. There is no need to reinvent the wheel regarding a process that has generally worked well. In particular, the Commission should adopt timelines for the challenge process found in the ReConnect program, adhering to a 45-day period to lodge a challenge to a BEAD Project application. *See* 7 C.F.R. § 1740.26; *see also* 7 U.S.C. § 950cc.

7. Match Requirement: What state funding should also be allowed to be used as matching funds?

The Commission should allow the use of any and all state matching funds that are conceivably available. Based on interactions at the local level, the Small LECs are under the impression that counties are struggling to use funds available to them under the American Rescue Plan Act (“ARPA”) due to federal conditions applied to those funds. The Commission should not impose similar handicaps that could limit the use of the BEAD Project funds. That said, a matching obligation that requires an applicant to have a minimum amount of its own funding is preferred; the use of other program funds should not reduce the matching obligation below a certain threshold, 25% for example, except in the most compelling of circumstances.

8. Statewide Middle Mile: How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network?

Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?

The Small LECs support designating any middle mile infrastructure built with BEAD Project funding as open access, available for use on standard terms and conditions. It also seems prudent to avoid the construction of middle mile infrastructure along routes that are substantially similar to routes being constructed or which have been constructed by the California Department of Technology (“CDOT”); therefore, the Commission should indicate a preference against middle mile projects that substantially duplicate CDOT middle mile routes.

9. Ministerial Review: Should the Commission include a ministerial review process whereby the Commission delegates to staff the ability to approve BEAD subgrants that meet certain criteria? What should those criteria be?

Although the Commission is in fact authorized to delegate ministerial review processes to staff,¹ the Small LECs are concerned that characterizing any funding decision as ministerial at worst is not consistent with legal standards establishing ministerial actions by agencies and at best adds uncertainty surrounding the interpretation of what constitutes a ministerial action. To avoid these inadvisable outcomes, the Commission should only allow approval of BEAD funding through its own decisions. The best model to preserve Commission decision-making while also allowing for the quickest possible processing of BEAD applications is the "resolution" process. When considering BEAD applications, Commission staff should memorialize its recommendations in a draft resolution, and then the Commission can act on such recommendations. For efficiency, multiple BEAD applications could be taken up in single resolution. The resolution process ensures transparency and due process, while also conforming to the limits placed on the Commission regarding the delegation of its authority.

¹ See *California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139, 144 (stating that public agencies may delegate the performance of ministerial tasks).

10. Grant Conditions: What conditions should the Commission impose on BEAD subgrantees-- for example, workforce development (e.g., job training) or affordable plans?

The Small LECs oppose adding conditions to the BEAD Project funds beyond any that might apply through federal regulations.

11. Grant Applications: How many application cycles should there be in a calendar year?

To avoid a first come, first awarded outcome, the Small LECs support the use of application windows for awarding BEAD funding. However, more than two funding cycles in a year becomes administratively challenging. The Commission will need time to review competing applications and make award determinations. Given the other funding opportunities that are available, the Commission will want to coordinate the BEAD application windows to maximize the opportunity for applicants to synchronize their applications among the various funding opportunities, including the BEAD Program. Allowing such synchronization will maximize the chances that the BEAD Program becomes successful.

12. Payments: What payment milestones should the BEAD subgrantee program adopt?

Consistent with previous comments on separate topics, the Small LECs encourage the Commission to follow precedent already established for payment milestones. The Commission's California Advanced Services Fund program provides an established framework for payment milestones that would be acceptable under the BEAD Program.

13. Impacts on environmental and social justice communities, including the extent to which BEAD Program subgrants will impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

Given that rural areas tend to be the highest cost areas to serve and generally are the poorest areas of the state, the Small LECs contend that the fact of the BEAD Project per se helps the Commission achieve social justice goals reflected in its Social Justice Action Plan.

14. How should the Commission implement other issues for which it has discretion under the BEAD NOFO.

The Small LECs have no comments on this topic at this time.

III. CONCLUSION.

The Small LECs look forward to ongoing participation in this process to ensure the BEAD Project funding is deployed in furtherance of the goal to deploy high-speed broadband infrastructure throughout the state.

Respectfully submitted on April 17, 2023, at Oakland, California.

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